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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/632,377	08/01/2003	Clayton A. Smith	045331/262602	4161
826	7590	04/01/2005	EXAMINER	
ALSTON & BIRD LLP BANK OF AMERICA PLAZA 101 SOUTH TRYON STREET, SUITE 4000 CHARLOTTE, NC 28280-4000			AFREMOVA, VERA	
		ART UNIT		PAPER NUMBER
				1651

DATE MAILED: 04/01/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/632,377	SMITH ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	Vera Afremova	1651

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 01 August 2003.

2a)  This action is **FINAL**.                            2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## **Disposition of Claims**

4)  Claim(s) 1-3,6-8,12-15,18 and 19 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) 1-3,6-8,12-15,18 and 19 is/are rejected.

7)  Claim(s) \_\_\_\_\_ is/are objected to.

8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 8/01/2003.

4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.

5)  Notice of Informal Patent Application (PTO-152)

6)  Other: \_\_\_\_\_.

### **DETAILED ACTION**

Claims 1-3, 6-8, 12-15, 18 and 19 are pending (preliminary amendment 8/01/2003) and under examination.

#### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

Claims 1-3 and 12-15 are rejected under 35 U.S.C. 102(a) as being anticipated by Storms et al. {IDS reference; Blood, (Nov. 15, 1998), Vol. 92, No. 10, Suppl. 1, part 1-2. pp. 59A}

Claims are directed to a method for detecting and isolating stem cells in a population of cells wherein the method comprises contacting said population of cells with a detectable substrate for aldehyde dehydrogenase (ALDH) under conditions such that ALDH is converted to a detectable product, wherein said stem cells have a higher concentration of said detectable product than the other cells and wherein substrate is BODIPY aminoacetaldehyde (BAAA). Some claims are/are further drawn to detecting cells having elevated level of ALDH by using ALDH substrate such as BODIPY aminoacetaldehyde (BAAA).

The reference by Storms et al. discloses a method for detecting and isolating human hematopoietic stem cells or cells with elevated level of ALDH by using ALDH substrate such as BODIPY aminoacetaldehyde (BAAA). Thus, it is considered to anticipate the claimed invention.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3, 6-8, 12-15, 18 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Storms et al. {IDS reference; Blood, (Nov. 15, 1998), Vol. 92, No. 10, Suppl. 1, part 1-2. pp. 59A} taken with Gai et al. {IDS reference; Eur. J. Gynecol. Oncol., 1991, Vol. 12(5), pages 359-374}.

Claims 1-3 and 12-15 as explained above. Some claims are further drawn to additional step of inhibiting efflux of substrate from cells by exposing cells to MDR inhibitor such as verapamil.

The reference by Storms et al. as explained above. It is lacking disclosure about the use of MDR. However, Gai et al. teaches inhibiting efflux of drugs or substrates from cells including cells with ALDH by exposing cells to MDR inhibitor such as verapamil (abstract). Therefore, it would have been obvious to one having ordinary skill in the art at the time the claimed invention was to inhibit efflux of drugs or substrates from cells by using MDR inhibitor or verapamil with a reasonable expectation of success to inhibiting efflux of substrates including detectable substrates from cells containing datable substrates. One of skill in the art would have been motivated to inhibit efflux of datable substrates for the expected benefits in maximizing detection of cells containing these detectable substrates. Thus, the claimed invention as a whole was clearly *prima facie* obvious, especially in the absence of evidence to the contrary.

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The claimed subject matter fails to patentably distinguish over the state art as represented be the cited references. Therefore, the claims are properly rejected under 35 USC § 103.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vera Afremova whose telephone number is (571) 272-0914. The examiner can normally be reached from Monday to Friday from 9.30 am to 6.00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Wityshyn can be reached at (571) 272-0926.

The fax phone number for the TC 1600 where this application or proceeding is assigned is (571) 273-8300.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Technology center 1600, telephone number is (571) 272-1600.

Vera Afremova

AU 1651

March 30, 2005



VERA AFREMOVA

PRIMARY EXAMINER